

**APPROACHES TO ENVIRONMENTAL RESOURCES
463HF**

**Course Materials
2001-2002**

VOLUME TWO OF TWO

Instructor: Katrina M. Wyman

**Faculty of Law
University of Toronto**

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F. Berkes, "Indigenous Knowledge and Resource Management Systems: A Native Canadian Case Study from James Bay" in S. Hanna & M. Munasinghe, eds., *Property Rights in a Social and Ecological Context: Case Studies and Design Applications* (Washington, D.C.: Beijer International Institute of Ecological Economics and the World Bank, 1995) 99 457

W.K. Stevens, "Biologists Fear Sustainable Yield Is Unsustainable Idea" *The New York Times* (20 April 1993) C4 468

G. Monbiot, "The Tragedy of Enclosure" in D. VanDeVeer & C. Pierce, eds., *The Environmental Ethics and Policy Book*, 2d ed. (Belmont: Wadsworth Publishing Company, 1998) 360 470

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C.M. Rose, “Environmental Faust Succumbs to Temptations of Economic Mephistopheles, or, Value by Any Other Name is Preference” (1989) 87 *Michigan Law Review* 1631 660

